

Rev. 3/19

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

TONY PENWELL

Plaintiff's full name and prisoner number

Plaintiff,

v.

Case No. 21-cv-5722-BHS-MLP
(leave blank – for court staff only)

CHERYL STRANGE DOC Secretary

ERIC JACKSON WSR Superintendent

MELIDA FERREL WSR CPM

Defendant's/defendants' full name(s)

Defendant(s).

**PRISONER CIVIL RIGHTS
COMPLAINT**

CLASS ACTION

Jury Demand?

☒ Yes

☐ No

(If you cannot fit all of the defendants' names in the space provided, please write "see attached" in the space above and attach additional sheets of paper, as necessary, with the full list of names. The names listed here must be identical to those in Section II. Do not include addresses here. Individuals whose names are not included in this section will not be considered defendants in this action.)

WARNINGS

1. Do not use this form if you are challenging the validity of your criminal conviction or your criminal sentence. If you are challenging your conviction or sentence, or if you are seeking restoration of good-time credits that would shorten your sentence, you must file a Petition for Writ of Habeas Corpus. If you use this form to challenge your conviction or sentence, you risk having your claim dismissed. Separate forms are available for filing a habeas petition.

2. Under the Prison Litigation Reform Act ("PLRA"), you are required to exhaust all remedies in your institution's grievance system that are available to you before filing suit. This generally means that you must file a grievance and, if it is denied, appeal it through all available levels of review. Your case may be dismissed if you fail to exhaust administrative remedies, unless the administrative grievance process was not "available" to you within the meaning of the PLRA. You are not required to plead or show that you have exhausted your claim in this complaint.

3. Please review your complaint carefully before filing. If your case is dismissed, it may affect your ability to file future civil actions while incarcerated without prepaying the full filing fee. Under the PLRA, a prisoner who has had three or more civil actions or appeals dismissed as frivolous, malicious, or for failure to state a claim cannot file a new action without first paying the full filing fee, unless the prisoner is in imminent danger of serious bodily injury.

4. Under Federal Rule of Civil Procedure 5.2, papers filed with the court, including exhibits or attachments to a complaint, may not contain certain information, which must be modified as follows:

- | | |
|---------------------------------------|------------------------|
| Do <u>not</u> include: | Instead, use: |
| • a full social security number | → the last four digits |
| • a full birth date | → the birth year |
| • the full name of a minor | → the minor's initials |
| • a complete financial account number | → the last four digits |

5. You may, but do not need to, send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint. Any documents you submit *must relate directly to the claims you raise in this lawsuit*. They will become part of the court record and *will not be returned to you*.

I. PLAINTIFF INFORMATION

<u>PENWELL, TONY</u>		
Name (Last, First, MI)	Aliases/Formal Names	
<u>DOC #274745</u>		
Prisoner ID #		
<u>WASHINGTON STATE REFORMATORY</u>		
Place of Detention		
<u>P.O. BOX 777,</u>		
Institutional Address		
<u>Monroe, WA. 98272</u>		
County, City	State	Zip Code

Indicate your status:

- | | |
|-----------------------------------------------------|----------------------------------------------------------------------------|
| <input type="checkbox"/> Pretrial detainee | <input checked="" type="checkbox"/> Convicted and sentenced state prisoner |
| <input type="checkbox"/> Civilly committed detainee | <input type="checkbox"/> Convicted and sentenced federal prisoner |
| <input type="checkbox"/> Immigration detainee | |

II. DEFENDANT INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint. Make sure that the defendant(s) listed below are identical to those contained in the caption on the first page of the complaint. Attach additional sheets of paper as necessary.

Defendant 1: STRANGE, CHERYL
 Name (Last, First)
DOC Secretary
 Current Job Title
DOC office of Correctional Operations P.O. Box 41101
 Current Work Address
Olympia, WA. 98504-1101
 County, City State Zip Code

Defendant 2: JACKSON, ERIC
 Name (Last, First)
WSR Superintendent
 Current Job Title
16700 177th AVE SE
 Current Work Address
Monroe, WA. 98272
 County, City State Zip Code

Defendant 3: FERREL, MELIDA
 Name (Last, First)
WSR CPM
 Current Job Title
16700 177th Ave SE
 Current Work Address
Monroe, WA. 98272
 County, City State Zip Code

III. STATEMENT OF CLAIM(S)

In this section, you must explain what you believe each defendant did to violate your civil rights, and if you know, identify the federal statutory or constitutional right you believe was violated.

If you believe the defendant(s) violated your civil rights in more than one way, explain each violation under a different count. For example, if you believe you received constitutionally inadequate medical care and your religious rights were substantially burdened, include one claim under "Count I" (i.e., medical) and the other claim under "Count II" (i.e., religion).

Number your paragraphs. For example, in Count I, paragraphs should be numbered 1.1, 1.2, 1.3, etc., and in Count II, paragraphs should be numbered 2.1, 2.2, 2.3, etc. The first two paragraphs of each Count have been numbered for you.

If you have more than three counts, attach additional pages and follow the same format for each count.

If you attach documents to support the facts of your claim(s), you must specify which portion of the document(s) (i.e., page and paragraph) you are relying on to support the specific fact(s) of your claim(s). If you do not specify the portion of the supporting document(s), the Court may disregard your document(s).

COUNT I

Identify the first right you believe was violated and by whom:

1.1 8th Amendment, violated by ALL named Defendants this action being brought against each Defendant in their individual & official capacities.

State the facts of your first claim below. Include all the facts you consider important. Be specific about dates, times, locations, and the names of the people involved. Describe exactly what each specific defendant did or failed to do that caused you injury or violated your rights, and include any other facts that show why you believe what happened was wrong.

DEFINITIONS: (Plaintiff) hereby means: the individual and All class members.

1.2 Each defendant acting under the color of law, personally took part in causing the violations of plaintiff(s) rights by ordering the acts to be carried out. Aware such acts were in violation of plaintiff(s) rights, were intentional, as to be Deliberate indifference, that today's society

refuse to find acceptable or is willing to tolerate.

1.3 The Washington State Reformatory (WSR) is composed of 4 living units, each have four tiers, with 158 single man cells. 12 showers, 10 telephones, two jpay's, and one kiosk machine. units A-B C-D Blocks 1&2.

1.4 A-B units cells are 54 square feet, C-D unit cells are 60 square ft. In March 1991, federal government study of U.S. prisons reported that the America Correctional Association standards call for a minimum of 70 square feet for single man cells, with 37 square feet of "unencumbered space".

1.5 The named defendants have forced incarcerated individuals (I/I) into dangerous Overcrowding conditions, by Forcing I/I from C-D units to Double cell with Medium Custody I/I in A-B units during a active Pandemic.

1.6 C-D units are Minimum Custody, and therefore are being stripped of all their privileges that come with the lower custody, and the privileges earned with good behavior, such as single man cells. These single man cell allow for individuals to endure substantially more grief and forces better behavior from each individual out of fear of loosing their single man cell. That's been stripped away without just cause. see attachment-

State with specificity the injury, harm, or damages you believe you suffered as a result of the events you described above in Count I.

Fear of Death, anticipation & defenseless

1.22 Anxiety, Stress, Sleeplessness, Mental anguish, Misery and Fear, Dehumanizing conditions, Serious acute discomfort amounting to physical and mental Pain, Humiliation, abuse from noise, and calculated harassment unjustifiable infliction of pain, antithetical to human dignity,

COUNT 1 ATTACHMENT

1.7 Defendants put out memos Stating, this consolidation was being done in order for the Department of Corrections (DOC) to be able to save money. (For their Biennial Budget cuts) disregarding the Pandemic.

1.8 This has basically forced; the WSR into same Dangerous Overcrowding conditions that the Prisoners filed suit in 1978, in BISHOP COLLINS et al., vs GERALD THOMPSON et al., cv-78-0013-BJR (1978), in this court by Honorable Chief judge, BARBARA J. ROTHSTEIN, C-78-13R, C-78-79R. where Defendants settled and their was a Consent Decree.

1.9 In the 1978 case the consent decree was based on Overcrowding contributing to stress, anxiety, tension and violence that lead to murder, assaults on both I/I and staff, bullying, suicides, lockdowns, thefts, sexual assaults, and an unremittingly high level of Violence, lack of sanitation, lack of available showers, lack of out of cell time, lack of available work, lack of clean laundry, medical issues, and security issues, and much more. (There was No Covid Pandemic then however)

1.10 The defendants have now forced "this same Overcrowding, violent environment that they admitted previously as being the contributing factor of the problems" . Defendants' know during this time of Covid-19 is substantially dangerous and tempers are at a all time high, then to be placed in such overcrowding situation that will surely recreate the exact situation all over again with the same exact results as the 1978 problems. However, defendants' simple do not care, as long as it will save them some money to get a "POLITICAL" win, nothing else matters....

1.11 DOC had WSRs capacity at 720. This number accounts for all four

living units, however, defendants have now crammed 570 into just two living units. the previous Sent Decree was based on 320 prisoners for this same situation in the same living units. A 158% capacity increase from when defendants' were previously sued for overcrowding without a virus....

1.12 The facility does not have adequate ventilation, heating or cooling in the units to safely house Double bunking in such a confined environment. The ventilation is so full of 100 year old contamination that it cannot provide adequate circulation in overcrowding.

1.13 Plaintiff has an extreme number of medical conditions from Heart issues, Diabetic, sleep disorder, anxiety disorder, suffers depression, and so on, all that requires Plaintiff to sleep with a cpap, and other health problems that are exacerbated from these unhealthy living conditions double celling in substantially small cells.

1.14 Fights and aggressive staff just... for simple things like trying to take a shower, Plaintiff being older at the lower end of the pecking order has been unable to get a shower, and fears of being hurt because someone bullying him out of a turn or out of dislike for him.

1.15 The noise level "is" out of control, causing mental anguish and living in pure misery, regular violence over other I/I making noise, sleep deprivation has become a regular thing due the 24hr noise.

1.16 It is literally painful forced to partially stand to defecate when trying to use the toilet that is six inches away from the end of the bed and latter going up to the upper bunk, its more the uncomfortable, its inhumane because there is not even enough room to lean in any direction to get a clean wipe when done.

1 1.17 The named Defendants' Strange, Jackson and Ferrell, and their
2 "plan", consolidated Washington incarcerated people "in a Pandemic" while
3 People are still getting sick from the virus that is causing harm to
4 human lives is dangerous and unconstitutional. The consolidation has
5 removed the very "Safe Space" that the Courts created by ordering the
6 release of some people, stopping all prosecutions in Civil and Criminal
7 cases. By taking away that "Safe Space" defendants are endangering the
8 lives of all Washington imprisoned persons.

9 1.18 Defendants being aware of the seriousness and permanent injuries
10 caused to health by the Covid virus, leading to premature Death.
11 therefore, by Placing imprisoned people in a position that even slightly
12 increases the 'possibilities' of exposure to such a dangerous virus, is a
13 clear showing of deliberate indifference and a violation of the eighth
14 amendment.

15 1.19 Defendant's "plan" overcrowding the Washington Prisons by closing
16 12 units Statewide, completely closing the Washington State Reformatory
17 WSR "in a active Pandemic" is not only reckless endangerment of human
18 life, it is being done for political gain for the States reentry program
19 and to save money to house imprisoned people. Both violate the eighth
20 amendment cruel unusual punishment.

21 1.20 To cram hundreds of incarcerated people onto buses to transport
22 them to every prison Statewide, mixing them in with thousands of other
23 imprisoned people that they have not cohort with while a active Pandemic
24 is still causing hundreds of thousands serious harm and death, Can only
25 be seen as Unconstitutional dangerous.
26

1.21 The only real safety measures Defendants have offered to the population is a face mask, however, those even came late in the Pandemic.

1.22: Other safety measures DOC never produced, or they were very short in coming, mostly, found excuses why the safety measure was taken away, blaming it on some a incarcerated person had done. However, it is not constitutional to leave my life or others in jeopardy because of what another may have done or not.

1.23: Defendants at the WSR have dismantled the Covid Stations, have been placing sick and suspected sick in punitive lock-up (IMU) where they treated punitively, in hope of keeping people from reporting being sick to accelerate the closure of the facility.

1.24: Defendants are falsifying the real numbers of active cases to accelerate closure of the facility to lesson the possibility of having their "plan" paused from moving forward.

1.25: The unlawful over crowding in a pandemic, is deliberate indifference in violation of the eighth amendment cruel unusual punishment. This is what defendants have done.

1.26: It is unconstitutional to expose incarcerated people to commutable diseases, this is what Defendant's "plan" does in violation of the eighth amendment.

COUNT II

Identify the second right you believe was violated and by whom:

2.1 14th amendment Due Process violated by all named defendants in their individual and official capacities.

State the facts of your second claim below. Include all the facts you consider important. Be specific about dates, times, locations, and the names of the people involved. Describe exactly what each specific defendant did or failed to do that caused you injury or violated your rights, and include any other facts that show why you believe what happened was wrong. If you need additional space, you may attach extra sheets.

2.2 Different levels of custody is earned by positive behavior,
as are other privilege and freedoms are earned privileges, that
these defendants have depriving Plaintiff of his earned Custody level, as
well all the rest of his earn privileges without due process as required.

2.3 Single man cells and a Prisoners television are the largest and the
most powerful privileges over any other privileges in prison, that
substantially reduce violence and other problems in prison. No prisoner
wants to be without these privileges. Taking away such privileges is
unconstitutional and violated the due process of law.

2.4 Defendants informed Plaintiff along with the rest of the
facility, about being deprived of all their privileges so they can
consolidate everyone to save money. Due process is required before
prisoners privileges are taken away. Such denial of privileges is in
violation of due process. Prisoners at WSR suffered from such deprivation.
While the same consolidations are taking place at the other facilities.
Defendant Strange is in full control over all facilities.

2.5 The process that is due to all prisoners in Washington, is to remain safe, Not be consolidated or transferred during a time of a pandemic other than for emergency purposes. DOC and these defendants' have proven, they are unable to keep prisoners safe from viruses, and are not equipped to now. It could not be at a more unsafe time in history to transfer hundreds of prisoners across the state to mix with all other facilities. This is Not lawful and violates the process that is due.

2.5 Deprivation of privilege's, Anxiety, Stress, Humiliation, Mental anguish, misery that causes physical pain and suffering

COUNT III

Identify the third right you believe was violated and by whom:

3.1 All named defendants are violating the 14th amendment Equal protection of law while acting in their individual and official capacities.

State the facts of your third claim below. Include all the facts you consider important. Be specific about dates, times, locations, and the names of the people involved. Describe exactly what each specific defendant did or failed to do that caused you injury or violated your rights, and include any other facts that show why you believe what happened was wrong. If you need additional space, you may attach extra sheets.

3.2 Plaintiff(s) are entitled to equal protection from action of the defendants listed in this suit. From the eighth amendment violations and Protection from being exposed to commutable diseases such as Covid - 19.

3.3 Plaintiff is protected by the U.S. constitutions against cruel and unusual punishment that Plaintiff has pointed to in this suit. Protection

from conditions of confinement that are so unconstitutional, placing plaintiff in danger, causing anxiety, stress, forcing them to live in fear of death from viruses that has not shown signs of being over. Plaintiff(s) equal protection rights are being violated by the forced unnecessary, unsafe Overcrowding conditions alone besides in the middle of a pandemic situation as dangerous as the Covid-19 virus.

3.4 Prison population across the State of Washington are being consolidated, prisoners are being confined tighter then pre-Covid, to close units in their facilities and make room for all the prisoners from such closed units and all prisoners that will be transferred out of the WSR for its closure while a serious pandemic is actively taking lives and leaving people with illnesses for the rest of their lives.

3.5 Prisons across the state are equally in fear of prisoners being shipped to their facilities bring the viruses that are everywhere, as the prisoners being transported in fear of the virus hiding under any crack or waiting at the facility they arrive at. Thus, Defendants plan to close units and facilities in a pandemic is deliberate indifference to life.

see Attachment

State with specificity the injury, harm, or damages you believe you suffered as a result of the events you described above in Count III. Continue to number your paragraphs.

3. Anxiety, Stress, Sleeplessness, Mental anguish, Misery and fear, Dehumanizing conditions, Serious acute discomfort amounting physical and mental Pain, Humiliation, Noise abuse, and calculated harassment, unjustifiable infliction of pain and suffering, antithetical to human dignity.

3.6 The 14th amendment protects against overcrowding and being placed in positions that have the possibility of causing exposure to commutable diseases.

3.7

Defendant's "plan" does just that, unnecessarily Place's Plaintiff and population, into positions that "GAMBLE" with the lives, safety and well being of Plaintiffs' by exposing them to the possibility of contracting the Virus.

3.8 Defendants can say they are taking precautions, however, the biggest precaution required is Not to be consolidating and mass transferring of incarcerated people in a Pandemic.

3.9 To cause substantially dangerous conditions, but then claim were taking precautions, is still placing individuals endanger unnecessarily. In violation of the fourteenth amendment Equal Protection.

.3.10 Defendants while acting under the color of law, knowingly have and are attempting to deprive Plaintiffs of their Constitutional protections that is endangering their lives safety, and well being.

IV. RELIEF

State exactly what you want the Court to do for you. For example, you may be seeking money damages from an individual defendant, you may want the Court to order a defendant to do something or to stop doing something, or you may want both kinds of relief. Make no legal arguments. Cite no cases or statutes.

AWARD/ISSUE:

Temporary & Preliminary & Injunctions, Damages- Punitive damages,
Declaratory judgement; Award compensatory damages; Grant such other
relief as it may appear that Plaintiff is entitled. against each
defendant independently and together, in both individual and official
capacities.

V. SIGNATURE

By signing this complaint, you represent to the Court that you believe the facts alleged to be true to the best of your knowledge, that you believe those facts show a violation of law, and that you are not filing this complaint to harass another person or for any other improper purpose.

9-28-21

Dated


Plaintiff's Signature